

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE  
AT GREENEVILLE

MICHAEL MARRS )  
                  )  
                  )  
v.               )                          NO. 2:98-CR-24  
                  )                          NO. 2:05-CV-61  
UNITED STATES OF AMERICA   )

**O R D E R**

The petitioner, Michael W. Marrs, has filed a *pro se* motion to vacate, set aside or correct his sentence under Section 2255. The petitioner pled guilty to Counts 1 and 8 of an indictment which charged him with a conspiracy to defraud the United States and with receiving stolen firearms. On May 3, 1999, he was sentenced to serve a total term of 120 months, and he did not appeal his conviction or sentence and therefore, his sentence is already final on direct review.

The petitioner asks this Court to rule that *United States v. Booker*, --- U.S. ----, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), is retroactive and to resentence him. However, the Sixth Circuit has concluded that *Booker's* rule does not apply retroactively to decisions already final on direct review. See *Humphress v. United*

*States*, 398 F.3d 855, 860 (6th Cir.2005).

Accordingly, it is hereby **ORDERED** that petitioner's motion under Section 2255 to vacate, set aside, or correct his sentence is **DISMISSED**. Inasmuch as the petitioner did not allege a substantial showing of the denial of a constitutional right, it is also hereby **ORDERED** that the petitioner is **DENIED** a certificate of appealability. Fed. R. App. 22(b); *Lyons v. Ohio Adult Parole Authority*, 105 F.3d 1063 (6th Cir. 1996). Petitioner's motion for the appointment of counsel is MOOT. [Doc. 3].

ENTER:

s/J. RONNIE GREER  
UNITED STATES DISTRICT JUDGE